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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3640 of 2004

Date of decision: 29.8.2007

State of Haryana and others ...Petitioners

Versus

Sham Lal ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Navneet Singh, Assistant Advocate General, Haryana
for the petitioners.

Mr.J.K.Goel, Advocate for the respondent.

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RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India, is to order dated June 8, 2004 passed by Additional Civil Judge (Senior Division), Kaithal dismissing the application of the petitioners for setting aside the exparte proceedings ordered against the petitioners.

Briefly the facts are that the respondent filed a suit against the petitioners claiming certain reliefs and when inspite of the service none appeared for respondents on May 30, 2001, the Court ordered the petitioner-defendants to be proceeded exparte.

The claim made by the petitioners in an application filed by them before the Court below, for setting aside exparte order, was that the notice of the suit was served on a person, who was not the dealing person in the office and he did not bring the same to the notice of the concerned official. They came to know about the factum of the pendency of the suit only on October 6, 2003 when an official of the petitioners' department was summoned as a witness. However, considering the fact that there was delay in filing the application and also the fact that one employee of the

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petitioners' department, namely, Sohan Lal was examined in the same suit on June 13, 2003, learned trial Court rejected the application.

Learned counsel for the petitioners submitted that the error occurred on account of impersonal attitude adopted by the official of the department. Otherwise, the petitioner-defendants were not to gain anything by not defending the suit, had the pendency of the suit been in knowledge of the person concerned. However, he could not deny the fact that there is a lapse not only on the part of the petitioners but also on the part of the office of the District Attorney, who represent the State in the cases before the trial Court as even if they had been vigilant enough they could very well inform the petitioners' department about the pendency of the proceedings. As far as appearance of one of the witness on June 13, 2003 is concerned, he submitted that even that official also did not bring the same to the notice of the department about the fact that the petitioners have been proceeded exparte in the suit. Summing up his arguments, he submitted that it is ultimately public money, which is put to loss in case ex-parte claim made by the respondent-plaintiff is accepted, which may have large ramification in the department as other employees may also claim the same relief.

On the other hand, learned counsel for the respondents submitted that the petitioners should not be given the benefit of lapse committed by them and in case the order of exparte is set aside, it will delay the trial of the case, which was filed 5 years back in 2001.

It is not in dispute that in the present case there is a clear lapse on the part of the petitioners in not pursuing the case properly. The application filed by the petitioners clearly admitted the fact that the summons in the case were served upon one Naresh Kumar, Clerk on May 8, 2001 in the office of petitioner no.2. However, the matter was not brought to the notice of the concerned clerk, namely, Rajinder Mohan. However, it is not alleged anywhere that absence of the petitioners from the Court was either intentional or malafide with a view to delay the proceedings. Hon'ble the Supreme Court while dealing with an application for condonation of delay filed by the State in **State of Haryana Vs. Chandra Mani AIR 1996**

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Supreme Court, 1623 observed as under:-

> "When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit.
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> Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers

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or servants."

The same view was expressed by Hon'ble the Supreme Court in **State of Nagaland Vs. Lipok AO and others** (2005) 3 Supreme Court Cases 752.

In the present case no doubt that with the setting aside the order proceeding the petitioners exparte, delay will occur in disposal of the suit, however, solely that reason for denying the setting aside of order, proceeding petitioners exparte, is not justified as for that respondent can be compensated with costs.

Accordingly, the petition is allowed. The impugned order passed by the trial Court is set aside. The application of the petitioners for setting aside the order proceeding exparte, is accepted subject to payment of Rs. 1000/- as costs to the respondent/plaintiff. The trial Court is directed to expedite the hearing of the suit.

Before parting with the order, I am constrained to make observation regarding the casualness in the approach adopted by the petitioners and the desirability of fixing the responsibility of the persons concerned for this lapse and punishing them suitably, including the recovery of the costs imposed by this Court, be considered by the Director, Secondary Education, Haryana. It would be in the fitness of things if some senior/responsible officer is given charge of the litigation instead of leaving the same at the mercy of the Clerks.

August 29, 2007 **(Rajesh Bindal)**
Pka **Judge**

(Refer to Reporter)